



LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 201

[Docket No. 2020-3]

DMCA Designated Agent Post Office Box Waiver Request Process

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: This final rule makes non-substantive technical amendments to the U.S. Copyright Office’s regulations governing the submission of designated agent and service provider information to the Office pursuant to the Digital Millennium Copyright Act (“DMCA”).

DATES: Effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at regans@copyright.gov, or Mark Gray, Attorney-Advisor, by email at mgray@copyright.gov. Each can be contacted by telephone by calling (202) 707-8350.

SUPPLEMENTARY INFORMATION:

Effective December 1, 2016, the Copyright Office adopted regulations governing the submission of designated agent and service provider information to the Office pursuant to the Digital Millennium Copyright Act (“DMCA”) in connection with the

implementation of an electronic registration system launched the same day.¹ Under that rule, service providers must provide their physical street address and may not provide a post office box absent “exceptional circumstances (*e.g.*, where there is a demonstrable threat to an individual’s personal safety or security, such that it may be dangerous to publicly publish a street address where such individual can be located).”² Service providers seeking to provide a post office box as their address are required to first obtain a waiver of the street address requirement from the Copyright Office. To request a waiver, a service provider “must send a signed letter, addressed to the [Office],” that contains, among other things, “a detailed statement providing the reasons supporting the request, with explanation of the specific threat(s) to an individual’s personal safety or security.”³ Upon receipt, the Office evaluates these requests to determine whether the circumstances warrant a waiver.

Based on its experience administering the current waiver system, the Office has determined that it is unnecessary to require that waiver requests be sent by mail, and that also permitting electronic requests to be sent via email would be beneficial both to service providers and the Office. Moreover, it would further the goals of the designation regulations. Because waiver requests must be approved in advanced of being able to designate an agent, the amount of time that passes between the service provider submitting its request and the Office receiving and acting on the request can impact the service provider’s safe harbor protection under 17 U.S.C. 512. Thus, it is in everyone’s best interest that the Office receive these requests as quickly as possible. Not only is

¹ 81 FR 75695 (Nov. 1, 2016). Technical amendments to these regulations were subsequently adopted, effective May 10, 2017. 82 FR 21696 (May 10, 2017).

² 37 CFR 201.38(b)(1)(i)–(ii).

³ 37 CFR 201.38(b)(1)(ii).

email a much faster and more efficient method of delivery than ordinary mail, but because of the Office’s physical location within the U.S. Capitol Complex, all mail, including waiver requests, undergo mandatory off-site security screening and decontamination before arriving at the Offices, which can further delay delivery beyond what a service provider might normally anticipate.

Because this rule only adds an additional, optional method by which a request for a waiver may be submitted to the Office, this final rule is a non-substantive, procedural change not “alter[ing] the rights or interests of parties,” and thus is not subject to the notice and comment requirements of the Administrative Procedure Act.⁴ Furthermore, the Office finds good cause that permitting notice and comment would be “contrary to the public interest” in this instance.⁵ Because this final rule will make it even easier and faster for service providers to seek waivers, it is in the public’s best interest that it take effect without delay. For these same reasons, the Office is making this final rule effective immediately upon publication in the Federal Register.⁶

List of Subjects in 37 CFR Part 201

Copyright, General provisions.

Final Regulations

⁴ See *Nat’l Mining Ass’n v. McCarthy*, 758 F.3d 243, 250 (D.C. Cir. 2014) (“The critical feature of a procedural rule is that it covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency.”) (internal quotation marks omitted); 5 U.S.C. 553(b) (notice and comment not required for “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice”).

⁵ See 5 U.S.C. 553(b) (notice and comment not required “when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest”).

⁶ See *id.* at 553(d) (“The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except—(1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule.”).

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR part 201 as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Amend § 201.38 as follows:

a. Revise paragraph (b)(1)(ii) to read as follows:

§ 201.38 Designation of agent to receive notification of claimed infringement.

* * * * *

(b) * * *

(1) * * *

(ii) A post office box may not be substituted for the street address for the service provider, except in exceptional circumstances (*e.g.*, where there is a demonstrable threat to an individual’s personal safety or security, such that it may be dangerous to publicly publish a street address where such individual can be located) and, upon written request by the service provider, the Register of Copyrights determines that the circumstances warrant a waiver of this requirement. To obtain a waiver, the service provider must make a written request submitted either by email, to poboxwaiver@copyright.gov, or by signed letter, addressed to the “U.S. Copyright Office, Office of the General Counsel” and sent to the address for time-sensitive requests set forth in §201.1(c)(1). Requests must contain the following information: The name of the service provider; the post office box address that the service provider wishes to use; a detailed statement providing the reasons supporting the request, with explanation of the specific threat(s) to an individual’s

personal safety or security; and an email address for any responsive correspondence from the Office. There is no fee associated with making this request. If the request is approved, the service provider may display the post office box address on its website and will receive instructions from the Office as to how to complete the Office's electronic registration process.

Dated: February 10, 2020.

Maria Strong,
*Acting Register of Copyrights and
Director of the U.S. Copyright Office.*

Approved by:

Carla D. Hayden,
Librarian of Congress.

[BILLING CODE 1410-30-P]

[FR Doc. 2020-03260 Filed: 2/26/2020 8:45 am; Publication Date: 2/27/2020]